IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1002 of 2005

Between:

M/s. SRI JYOTHI ICE & COLD STORAGE,

Rep. by its Proprietor K.Ramachandra Raju,

S/o.Venkata Raju, Aged about 50 years,

SC No.144, Mandalaparru, Nidamarru Mandal,

West Godavari District.

..... PETITIONER

AND

1. Eastern Power Distribution Company of AP Ltd.,

Rep. by its Managing Director,

Viskhapatnam.

2. The Superintendent Engineer,

Operation Circle,

Eastern Power Distribution Company of AP Ltd.,

Eluru, West Godavari District.

3. Assistant Divisional Engineer,

Operation APEPDCL,

Ganapavaram, West Godavari District.

4. Assistant Divisional Engineer,

DPE-1, APEPDCL,

Eluru, West Godavari District.

5. Assistant Accounts Officer,

Electricity Revenue Officer,

APEPDCL,

TadapalliGudam, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, order or direction more particularly one in the nature of writ of Mandamus declaring the order of the 2nd respondent in proceedings No.SE/O/ELR/DE.T/AAE.T2/F.DOC/D.No. 564/03 dated 24-01-2003 as illegal, unjust and unenforceable and set aside the consequential demand of 5th respondent in letter No.AAO/ERO/TPG/JAO.IV/Monthly/D.No.2615/2004/17-12-2004.

Counsel for the Petitioner: MR.A.VEERASWAMY

Counsel for the Respondents: MR.M.SREERAMULU REDDY

The Court at the admission stage made the following :

ORDER:

The petitioner is a consumer of electricity under LT Category-III. It was issued a show cause notice on 04.06.1996 by the respondents, whereunder the petitioner was called upon to explain as to why necessary assessment shall not be made against it, on account of the fact that the meter was found defective during the course of inspection on 19.09.1995. The petitioner submitted its explanation. On consideration of the same, the 2nd respondent passed an order of final assessment dated 24.01.2003. It was pointed out that the petitioner is liable to pay a sum of

Rs.1,11,832/- towards the charges of electricity that could not be recorded on account of defective functioning of the meter. The petitioner challenges the same.

Sri A.Veera Swamy, learned counsel for the petitioner, submits that the 2nd respondent did not follow the procedure prescribed under Clause 22.3.3.3 of the terms and conditions of supply and that the petitioner was not given an opportunity of being heard. He also contends that there is no basis for requiring the petitioner to pay such a huge amount.

Sri M.Sreeramulu Reddy, learned Standing Counsel for the respondents, on the other hand, submits that the impugned order was passed only after following the prescribed procedure and on a consideration of the explanation submitted by the petitioner. He contends that the petitioner has a remedy by way of an appeal and the writ petition is not maintainable.

It is not in dispute that an order of final assessment is appealable, be it, under the Electricity Act, 2003 or the relevant terms and conditions of supply. The appellate authority will be in a better position to appreciate the contentions, particularly those touching on facts. It is not the case of the petitioner that the 2nd respondent does not have the jurisdiction to pass the impugned order.

In that view of the matter, the petitioner is required to avail the remedy of appeal. The relevant provisions mandate that certain amount has to be deposited as a condition precedent for preferring the appeal. The aspect of delay also needs to be considered at that stage. Though the order is dated 24.01.2003, the consequential steps are said to have been taken only through a notice 17.12.2004.

Hence, the writ petition is disposed of, directing that in case the petitioner presents an appeal before the appellate authority, within a period of four weeks from today, it shall be entertained as having been filed within the period of limitation. The petitioner shall also deposit one-fourth of the amount covered by the order of final

assessment, as a condition precedent for preferring the appeal. The respondents shall not disconnect the power supply, in case the petitioner complies with the conditions stipulated above, during the pendency of the appeal. There shall be no order as to costs.

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28.01.2005

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To

1. The Managing Director,

Eastern Power Distribution Company of AP Ltd.,

Viskhapatnam.

2. The Superintendent Engineer,

Operation Circle,

Eastern Power Distribution Company of AP Ltd.,

Eluru, West Godavari District.

3. Assistant Divisional Engineer,

Operation APEPDCL,

Ganapavaram, West Godavari District.

4. Assistant Divisional Engineer,

DPE-1, APEPDCL,

Eluru, West Godavari District.

5. Assistant Accounts Officer,

Electricity Revenue Officer,

APEPDCL,

TadapalliGudam, West Godavari District.

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